



August 13, 2002

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2002-4441

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167065.

The City of Garland (the "city") received a request for a copy of all calls answered by the Garland Police Department for a specified period of time. You have provided to this office the Garland Police Department Dispatch log, which contains the date, time, address, and incident code of all service calls for the specified time period. You state that you have released this log to the requestor in redacted form. You state that you have also released to the requestor the Event Type Definition Form, which explains the meaning of each event code used in the Dispatch Log. You claim that the information you have redacted, and which you have highlighted in your submission to this office, is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that one of the highlighted offense codes is described as "Injury to a Child." Section 261.201 of the Family Code¹ provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses section 261.201 of the Family Code.

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note that a “child” is defined for purposes of section 261.201(a) as a “person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.” See Fam. Code § 101.003(a) (defining “child”). We also note that the submitted information does not reveal on its face whether the person who was the alleged victim in these matters was a child for purposes of section 261.201 at the time of the alleged offenses. Therefore, we are unable to conclude that the highlighted offense code “INJ” concerns a report or investigation of alleged or suspected abuse or neglect under chapter 261. For this reason, we conclude that the city may not withhold the address associated with the offense “INJ” or “Injury to a Child.”

Section 552.101 also encompasses common-law privacy. Common-law privacy excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Moreover, this office has determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, *see* Open Records Decision No. 455 (1987); the results of mandatory urine testing, *see id.*; illnesses, operations, and physical handicaps of applicants, *see id.*; the fact that a person attempted suicide, *see* Open Records Decision No. 422 (1984); and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, *see* Open Records Decision No. 343 (1982).

You indicate that the listed addresses, which you have already released, would tend to identify individuals afforded protection by common-law privacy. However, events at only some of these addresses, which we have marked, implicate common-law privacy. Moreover, if these events did not occur at the homes of the victims, we are not persuaded that release of the information you have highlighted would identify such victims. Accordingly, we

conclude that the city must withhold the information we have marked only if the addresses where the events occurred are the home addresses of the victims. *See* Open Records Decision Nos. 393 (1983), 339 (1982).

In summary, based on section 552.101, the city must withhold the information we have marked only if the addresses where the events occurred are the home addresses of the victims. The remainder of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 167065

Enc: Submitted documents

c: Mr. James Donato, President
Capitol Publishing
2213 Paradise Road
Las Vegas, Nevada 89104
(w/o enclosures)